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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/346,678	07/02/1999	MASAAKI IWANE	35.C13630	2744

5514 7590 03/19/2002

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NEW YORK, NY 10112

EXAMINER

DIAZ, JOSE R

ART UNIT	PAPER NUMBER
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2815

DATE MAILED: 03/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

182

**Advisory Action**

Application N .

09/346,678

Applicant(s)

IWANE ET AL.

Examiner

José R. Díaz

Art Unit

2815

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 25 January 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

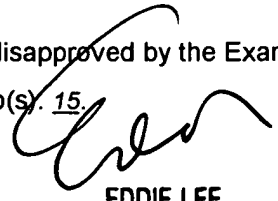
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 7-9.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 15.
10. ☒ Other: See Continuation Sheet

  
EDDIE LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed are not persuasive. With regards to the interpretation of the term "principal plane" as argued by Applicant in the remarks, Applicant must recognize that during patent examination, the claims must be interpreted as broadly as their terms reasonably allow unless applicant has provided a clear definition in the specification (see MPEP 2111 and In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)). Since the term "principal plane" is not further defined as a "horizontal plane", the Examiner must interpret the term "principal plane" according to its plain meaning (see MPEP 2111 and In re Sneed, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983)). One of ordinary skills in the art recognizes that the term "principal plane" is not restricted to a horizontal plane but to a specific plane in a crystal material defined by the Miller indices. Thus, Applicant's arguments are not persuasive since the prior art Kondou, as stated in the previous Office Actions, anticipates the claimed invention of an active layer having at least one specific plane (111). See for example col. 2, lines 33-35 and claim 2 of Kondou.

Continuation of 10. Other: The Examiner thanks Mr. Ragusa (Reg. No. 38,586) for faxing copy of the missing drawings, which were filed on Paper No. 12. However, the missing drawings were found and matched with the Application. The Examiner apologizes for any inconvenience. .